

## Message Text

CONFIDENTIAL

PAGE 01 BONN 05284 01 OF 02 251524Z  
ACTION EUR-12

INFO OCT-01 ISO-00 L-03 USIA-06 OC-06 CCO-00 A-01  
( ISO ) W

-----260229Z 118628 /42

R 251512Z MAR 77  
FM AMEMBASSY BONN  
TO SECSTATE WASHDC 6818

C O N F I D E N T I A L SECTION 01 OF 02 BONN 05284

E. O. 11652: GDS  
TAGS: PDIP, AFSP, ACOM GW  
SUBJECT: OFFICIAL STATUS AMERIKA HAEUSER - INSTALLA-  
TION AMERICAN MANUFACTURED EPABX'S

REF: A) BONN 02120, B) BONN 03896, C) STATE 060547,  
1976; AND D) DEPARTMENT OF JUSTICE R312043Z  
JANUARY 1977

SUMMARY: FURTHER DISCUSSIONS WITH THE FONOFF RELATIVE  
TO THE STATUS OF "AMERIKA HAEUSER" AND THE EMBASSY'S  
DESIRE TO INSTALL AMERICAN-MANUFACTURED TELEPHONE  
EQUIPMENT IN THESE INSTALLATIONS HAVE RESULTED IN AN  
IMPASSE. THE FONOFF REQUESTS STATUS QUO AND PREFERS  
NOT TO MAKE A FORMAL LEGAL DETERMINATION AS TO "AMERIKA  
HAEUSER" STATUS UNDER THE TERMS OF THE VIENNA  
CONVENTION; HOWEVER, IT OFFERS ITS "GOOD OFFICES" IN  
EMBASSY NEGOTIATIONS WITH THE FRG MINISTRY OF POST AND  
TELECOMMUNICATIONS. END SUMMARY

1. FONOFF, IN RESPONSE EMBASSY'S NOTE MARCH 1976, AND  
SUBSEQUENT QUERIES, AGREED ON FEBRUARY 24, 1977 TO  
DISCUSS THE QUESTION OF PRIVILEGED STATUS OF "AMERIKA  
HAEUSER" (USIS INFORMATION CENTERS) AND THE EMBASSY'S  
REQUEST TO INSTALL AND MAINTAIN AMERICAN-MANUFACTURED  
TELEPHONE EQUIPMENT IN THESE INSTALLATIONS.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BONN 05284 01 OF 02 251524Z

2. IT WILL BE RECALLED THAT THE FRG MINISTRY FOR POST  
AND TELECOMMUNICATIONS CONTENTS THAT CULTURAL AND  
INFORMATION CENTERS DO NOT FORM PART OF DIPLOMATIC AND  
CONSULAR ESTABLISHMENTS AND THEREFORE DO NOT HAVE THE  
STATUS NECESSARY FOR THE SPECIAL REGULATIONS FOR  
TELEPHONE EXCHANGES IN DIPLOMATIC MISSIONS AND CONSULAR

POSTS TO APPLY. THE EMBASSY RESPONDED ON THE MATTER OF PRIVILEGED STATUS THAT CENTERS AT THE PREMISES OF USIS ARE A FUNCTION OF THE DIPLOMATIC/CONSULAR MISSION IN ACCORDANCE WITH ARTICLES 3(E) AND 5(B) RESPECTIVELY, OF THE VIENNA CONVENTION ON DIPLOMATIC AND CONSULAR RELATIONS, SERVING AS THE PUBLIC AFFAIRS AND CULTURAL ARMS OF THE US DIPLOMATIC MISSION OR CONSULAR POSTS. AS "AMERIKA HAEUSER" ARE USED FOR PURPOSES OF THE UNITED STATES DIPLOMATIC AND CONSULAR MISSIONS IN GERMANY AND CONSTITUTE PREMISES OF THE MISSION, THEY ARE ENCOMPASSED BY THE RECIPROCAL AGREEMENT PERMITTING INSTALLATION OF FOREIGN-MANUFACTURED TELEPHONE EQUIPMENT AT AMERICAN OFFICIAL INSTALLATIONS IN GERMANY.

3. THE FONOFF REPRESENTATIVES STATED THAT THE MINISTRY PREFERRED NOT TO HAVE TO MAKE A LEGAL DETERMINATION ON THE PRIVILEGED STATUS OF "AMERIKA HAEUSER". THE GERMAN GOVERNMENT HAS DECLINED IN THE PAST TO ACCORD PRIVILEGED STATUS FOR THE INFORMATION AND CULTURAL CENTERS IN GERMANY OF OTHER FOREIGN GOVERNMENTS. THIS WAS INTENDED PRIMARILY TO PRECLUDE A PROLIFERATION OF CENTERS OF EASTERN EUROPEAN GOVERNMENTS STAFFED BY PERSONNEL WITH DIPLOMATIC AGENT STATUS. EXPRESSLY ACCORDING PRIVILEGED STATUS TO "AMERIKA HAEUSER" WOULD SET A HIGHLY UNDESIRABLE PRECEDENT. THE REPRESENTATIVES WENT ON TO SAY THEY HAD ASKED THE MINISTRY OF POST AND TELECOMMUNICATIONS TO TRY TO ACCOMMODATE OUR REQUEST TO INSTALL AMERICAN EQUIPMENT, AND HOPED WE WOULD WORK OUT ANY TECHNICAL AND EQUIPMENT PROBLEMS

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BONN 05284 01 OF 02 251524Z

WITH THE MINISTRY.

4. THE FONOFF REPRESENTATIVES UNDERSTOOD THE EMBASSY'S ARGUMENT, PRESENTED AGAIN AS OUTLINED IN REFTTEL A/ NOTING, HOWEVER, THAT THE ARGUMENTS WERE VIEWED IN LIGHT OF THE FRG INTERPRETATION OF THE LEGAL SITUATION. THEY NOTED THAT THE EMBASSY HAD ACCEPTED THE GERMAN GOVERNMENT'S POSITION STATED BY THEIR NOTE VERBALE OF OCTOBER 29, 1969, THAT "THE OBLIGATIONS OF THE RECEIVING STATE FOR THE SAFETY OF THE PREMISES OF FOREIGN DIPLOMATIC AND CONSULAR MISSIONS, IMPOSED BY ARTICLE 22 OF THE VIENNA CONVENTION, CANNOT BE ACCEPTED FOR CULTURAL INSTITUTIONS AND OTHER ESTABLISHMENTS OF FOREIGN STATES." THIS STATEMENT WAS MADE IN CONNECTION WITH A FINAL PAYMENT BY THE GERMAN GOVERNMENT FOR DAMAGE TO "AMERIKA HAEUSER" DURING DEMONSTRATIONS. THE EMBASSY REPRESENTATIVES HAD EXPECTED THIS ARGUMENT, HOWEVER,

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 BONN 05284 02 OF 02 251531Z  
ACTION EUR-12

INFO OCT-01 ISO-00 L-03 USIA-06 OC-06 CCO-00 A-01  
( ISO ) W  
-----260229Z 118640 /42

R 251512Z MAR 77  
FM AMEMBASSY BONN  
TO SECSTATE WASHDC 6819

C O N F I D E N T I A L SECTION 02 OF 02 BONN 05284

AND POINTED OUT THAT OUR TACIT ACCEPTANCE OF THEIR POSITION AT THAT TIME NO DOUBT WAS DUE TO THE NUMBER OF INCIDENTS IN CONJUNCTION WITH THE UNUSUAL AND EXTREME INTERNATIONAL SITUATION DURING THE HEIGHT OF THE VIET NAM WAR DEMONSTRATION PERIOD. THEIR DEFAULT AND OUR LACK OF RESPONSE IN NO WAY IMPLIED OUR AGREEMENT TO THE GERMAN POSITION.

5. AGAIN WELL PREPARED, AND AGAINST THE BEST HOPES OF THE EMBASSY REPRESENTATIVE, THE GERMANS BROUGHT UP THE QUESTION OF RECIPROCITY IN RESPECT TO PUBLIC LAW 94-583 (FOREIGN SERVICE IMMUNITIES ACT OF 1976) (REFTEL D CONCERNING PENDING ROTH CASE AT CONGEN FRANKFURT) AND THE CLAIM AGAINST THE GERMAN INFORMATION CENTER IN NEW YORK, WHERE THE DEPARTMENT OF STATE DECLINED TO SUGGEST THE FRG'S IMMUNITY FROM SUIT. THE INFORMATION CENTER WAS DEEMED TO PERFORM PUBLIC RELATIONS AND RELATED SERVICES, NOT INVOLVED IN THE FORMULATION OF GOVERNMENT POLICIES, NOR UNIQUELY GOVERNMENTAL ACTIVITY, BUT ESSENTIALLY SERVICES OF A COMMERCIAL NATURE. IN CONSEQUENCE, THE GERMAN INFORMATION CENTER WAS NOT RECOGNIZED TO ENJOY SOVEREIGN IMMUNITY. THE GERMANS CONSIDERED THE SITUATION OF "AMERIKA HAEUSER" TO BE ANALOGOUS.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BONN 05284 02 OF 02 251531Z

6. THE EMBASSY REPRESENTATIVE RESPONDED THAT THIS WAS A CLAIM WITH RESPECT TO A PARTICULAR CENTER TRANSACTION, COMMERCIAL IN NATURE AND WITH A PRIVATE FIRM, AND NOT WITH RESPECT TO THE PURPOSE OF THE ACTIVITY AS DEFINED BY THE VIENNA CONVENTION. IN LIKE CASES IT WOULD BE INCONSISTENT WITH UNITED STATES POLICY TO ASSERT IMMUNITY. PROVISIONS OF THE VIENNA CONVENTION, E.G. ARTICLE 1(I) PREMISES, 3(E) FUNCTIONS, AND 22 INVIOABILITY, AND OTHER ARTICLES OF PRIVILEGES AND IMMUNITY, WERE VALID STILL AS INTENDED. IT WAS AGREED TO DISAGREE AS TO THE FULL IMPLICATIONS OF THE "FOREIGN SERVICE IMMUNITIES ACT OF 1976" AND SUBSEQUENT DETERMINATIONS REGARDING THE GERMAN INFORMATION CENTER IN NEW YORK.

7. THE DISCUSSIONS TURNED TO THE IMPLICATIONS OF GERMAN GOVERNMENT FAILURE EXPLICITLY TO RECOGNIZE THE PRIVILEGED STATUS OF "AMERIKA HAEUSER" AND TO RECOGNIZE THEIR INTEGRAL STATUS AS FUNCTIONS AND PREMISES OF CONSULATES GENERAL. THE GERMAN REPRESENTATIVES STATED THAT THE GERMAN GOVERNMENT FULLY APPRECIATED THE WORK OF USIS IN GERMANY AND THE VALUE OF "AMERIKA HAEUSER" TO BOTH COUNTRIES. THE OFFICIAL POSITION OF THE GERMAN GOVERNMENT IS TO ACCORD FULL PRIVILEGED STATUS BUT ONLY AS HITHERTO ON AN INFORMAL BASIS. THEY WOULD NOT BE PREPARED TO ACCEPT RESPONSIBILITIES OF ARTICLE 22 OF THE CONVENTION FOR SAFETY (REIMBURSEMENT FOR DAMAGE) OF THE PREMISES, AND FURTHER WOULD FIND IT EXTREMELY UNPALATABLE TO REACH A FORMAL LEGAL DECISION ABOUT THE STATUS OF "AMERIKA HAEUSER".

8. IT IS THE JOINT OPINION OF THE EMBASSY AND USIS THAT THE STATUS QUO, WHICH REMAINS HIGHLY FAVORABLE TO THE U.S., SHOULD BE ACCEPTED WITHOUT FURTHER EFFORTS FOR ANY FORMAL LEGAL DETERMINATIONS. SHOULD THE TECHNICAL NEGOTIATIONS WITH THE MINISTRY OF POST AND TELECOMMUNICATIONS BE UNSUCCESSFUL, AND UNLESS INSTRUCTED TO THE CONTRARY, THE EMBASSY WILL NOT PURSUE FURTHER THE MATTER OF INSTALLING AMERICAN-MANUFACTURED TELEPHONE EQUIPMENT IN "AMERIKA HAEUSER".

CONFIDENTIAL

PAGE 03 BONN 05284 02 OF 02 251531Z

STOESSEL

CONFIDENTIAL

NNN

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01-Jan-1994 12:00:00 am  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** TELEPHONE SYSTEMS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Sent Date:** 25-Mar-1977 12:00:00 am  
**Decaption Date:** 01-Jan-1960 12:00:00 am  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 22 May 2009  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1977BONN05284  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** GS  
**Errors:** N/A  
**Expiration:**  
**Film Number:** D770103-0923  
**Format:** TEL  
**From:** BONN  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1977/newtext/t19770323/aaaaatvb.tel  
**Line Count:** 218  
**Litigation Code IDs:**  
**Litigation Codes:**  
**Litigation History:**  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Message ID:** 599361b2-c288-dd11-92da-001cc4696bcc  
**Office:** ACTION EUR  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 4  
**Previous Channel Indicators:** n/a  
**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** n/a  
**Reference:** 77 BONN 2120, 77 BONN 3896, 77 STATE 60547  
**Retention:** 0  
**Review Action:** RELEASED, APPROVED  
**Review Content Flags:**  
**Review Date:** 15-Feb-2005 12:00:00 am  
**Review Event:**  
**Review Exemptions:** n/a  
**Review Media Identifier:**  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**SAS ID:** 3001465  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** OFFICIAL STATUS AMERIKA HAEUSER - INSTALLA- TION AMERICAN MANUFACTURED EPABX\X  
**TAGS:** PDIP, AFSP, ACOM, GE  
**To:** STATE  
**Type:** TE  
**vdkgvwkey:** odbc://SAS/SAS.dbo.SAS\_Docs/599361b2-c288-dd11-92da-001cc4696bcc  
**Review Markings:**  
Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
22 May 2009  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009